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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/901,563

07/11/2001

Sei Kato

Q65368

4811

7590

07/11/2005

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EXAMINER

KIM, KEVIN

ART UNIT

PAPER NUMBER

2638

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/901,563

Applicant(s)

KATO, SEI

Examiner

Kevin Y. Kim

Art Unit

2638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 and 6 is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/18/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. Based on a better understanding of the claimed invention as defined by the amendment to the claims, a new search has been made and new ground(s) of rejection is set forth below for claims 1,3,4,5,7 and 8.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pon et al (US 6,272,343) in view of Henry, Jr. (5,991,622).

Pon et al discloses a digital broadcast receiver, see Fig.4 and col.2, lines 9-11, comprising;

a signal strength detecting part, see col. 13, lines 33-35, and

a signal strength comparing part for comparing the detected strength with a threshold, see col.13, lines 35-37, wherein a search operation is performed based on the comparison result, see col. 13, lines 44-45, for services belonging to an ensemble containing a service with a high signal level exceeding the threshold.

The claimed invention is different in that it measures error rate instead of signal strength. However, these are interchangeable measures of channel qualities as evidenced by Henry, Jr. see col.1, lines 55-57.

Thus, it would have been obvious to one skilled in the art at the time the invention was made to measure error rate of each channel as a measure of channel quality as taught by Henry, Jr. for the purpose of more accurate measure of channel quality.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 5,7 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Pon et al (US 6,272,343).

Pon et al discloses a digital broadcast receiver, see Fig.4 and col.2, lines 9-11, comprising;

a signal strength detecting part, see col. 13, lines 33-35, and

a signal strength comparing part for comparing the detected strength with a threshold, see col.13, lines 35-37, wherein a search operation is performed based on the comparison

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result, see col. 13, lines 44-45, for services belonging to an ensemble containing a service with a high signal level exceeding the threshold.

***Allowable Subject Matter***

6. Claims 2 and 6 are allowed.

***Conclusion***


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Liebenow (US 6,865,379) teaches a digital broadcast receiver comparing a received signal level with a threshold for subsequent operations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Y. Kim whose telephone number is 571-272-3039. The examiner can normally be reached on 8AM --5PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Venderpuye can be reached on 571-272-3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
KEVIN KIM  
PATENT EXAMINER